IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1725 of 2005

Jayant S Parab and ors, .. Appellants.
Vs
Amrut V Parab and ors. .. Respondents.

Mr S.B.Shetye, for the appellants.
Mr A.R.Patil, AGP for respondent no.2-State.
None for respondent no.1, though served.

CORAM : D.B.BHOSALE,J.
DATE : 14.11.2006
PC:

1. Heard Mr Shetye, learned counsel for the appellants and Mr.Patil, learned AGP, for respondent no.2-State. None appears for respondent no.1, though served. Admit. By consent, the appeal is heard forthwith. Mr Patil, learned AGP, waives service for respondent no.2.

2. This appeal is arising from the judgment and order dated 22.6.2005, rendered in Land Reference no.266 of 1997, by which the reference has been dismissed. The operative part of the judgment reads thus:

> "1. Reference is hereby dismissed without costs.
> 2. It appears that the land in respect of which compensation of Rs.84,111/- is awarded, belonged to the persons who had no power to alienate the same.
> 3. The compensation amount deposited in this court by the Collector, Sindhudurg be returned to

him with all accrued interest hereon.

4. The Collector, Sindhudurg is directed to invest the compensation amount for the purchase of other land to be held under the right, title and conditions of ownership as the land in respect of which the compensation amount had deposited in the court.

5. If, the purchase of other land cannot be effected forthwith, then the Collector shall invest the amount in fixed deposit in State Bank of India, Branch-Oros, until the same amount is applied for the purchase of such other land or the amount is paid to any person or persons becoming absolutely entitled thereto.

6. The cost of investment of the amount and other ancillary costs shall be borne by the Government.

7. Bill of costs be drawn up accordingly.

Dictated and declared in the open Court."

3. The reference was under section 30 of the Land Acquisition Act seeking apportionment of the amount of compensation awarded to the owners of the land in respect of Survey No.13/3-A of village Ranbambuli, Tal-Kudal, Dist-Sindhudurg, which was acquired for the Head Quarters of Sindhudurg District. The total area was 93 Ares. The amount awarded was Rs.84,111/-. The appellants claimed their share in the compensation contending that respondent no.1, i.e. claimant no.1

had no concern with the land acquired and he was not entitled to claim the amount of compensation.

4. The court below, after considering the entire material placed on record, has categorically held that the deed of relinquishment, on the basis of which respondent no.1 had claimed interest in the property, was declared illegal vide judgment and order dated 7.2.2001 passed in Regular Civil Suit no.20 of 1997. That suit was filed by the heirs of Sitaram Babaji Parab and Rajaram Narayan Parab as also by Prabhavati Krishnakant Sawant. Appellant nos 1,2 and 4 were also plaintiffs in the said suit, being the heirs of Sitaram Babaji Parab and Rajaram Narayan Parab. Appellant No.5 -Prabhavati Krishnakant Sawant was also plaintiff no.3 in the said suit. Insofar as Appellant no.3, i.e. Sumati Ravikant Parab is concerned, she was added as defendant no.2 in the said suit. The suit was instituted mainly against respondent no.1 seeking declaration that the plaintiffs and Sumiti Parab were the owners of land Survey No.13/3-A and that the deed of relinquishment dated 19.3.1996, which was allegedly executed by Rajaram Narayan Parab in favour of respondent no.1-Amru Vishnu Parab, was void and illegal. The suit was partly decreed and it was declared that the deed of relinquishment dated

19.3.1996 was void and illegal. In the said suit a specific question was framed for determination that whether plaintiff nos 1A to 1D in the said suit, which consists of appellant nos 1 and 4 in the instant appeal, prove their right, title and interest in the suit land. That question was answered in affirmative, holding that the heirs of Sitaram Babaji Parab have right, title and interest in the suit land. The suit land in the said suit and in the present appeal is one and the same. However, there is a variance insofar as area is concerned. The suit land in the said suit was 60 Ares whereas the area of the suit land in the present appeal is 93 Ares.

5. In our case, the Reference Court, while rejecting the claim of appellant nos 1, 2 and 4, i.e. Jayant Parab, Rajeshri Parab and Jaishri Parab, held that they failed to prove their independent right in the property in question, of which the compensation was payable. For recording this finding, a reliance was placed on the revenue record which shows the name of Amrut Vishnu Parab-respondent no.1 as owner of the said land. The court below, however, overlooked the finding recorded by the civil court in regular civil suit no.20 of 1997 in respect of the rights of respondent no.1. Similarly, the appellant nos.1 and 4, who were

plaintiff nos. 1A and 1B in the said suit, were declared to be the owners of the suit land bearing survey no.13/3-A, admeasuring 60 Ares, situate at village Ranbambuli, Tq-Kudal, district Sindhudurg. This finding itself, prima facie, proves that atleast appellant Nos. 1 and 4 had right, title and interest in respect of 60 Ares out of the suit land. The reference court has rightly rejected the claim of respondent no.1 on the basis of the judgment of the civil court in regular civil suit no.20 of 1997. Keeping that in view and considering the overall facts and circumstances of the case, learned counsel for the appellants prayed for remand of the appeal to the reference court for its consideration afresh insofar as the rights of all the appellants are concerned. This prayer was not seriously opposed by the learned AGP, learned counsel for respondent no.1.

6. In the circumstances, the appeal is allowed. The judgment and order dated 22.6.2005 insofar as the appellants are concerned, is quashed and set aside. The trial Court shall decide the reference insofar as their rights are concerned, as expeditiously as possible and preferably within a period of four months from the date of receipt of this order, after giving an opportunity of being heard to the appellants and

allowing them to lead further evidence if they so desire. The appeal is accordingly disposed of with no order as to costs.

(D.B.BHOSALE,J.)